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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

ORANGE COUNTY CATHOLIC  
WORKER, et al.,

Plaintiffs,

vs.

ORANGE COUNTY, et al.,

Defendants.

CASE NO. 8:18-cv-00155-DOC-JDE

**APPLICATION TO APPEAR AS  
AMICUS CURIAE IN SUPPORT OF  
PLAINTIFFS' APPLICATION FOR  
PRELIMINARY INJUNCTION AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES; BRIEF OF  
AMICUS CURIAE**

Date: February 13, 2018  
Time: 8:00 a.m.  
Courtroom: 9D

The Honorable David O. Carter

**APPLICATION TO APPEAR AS *AMICUS CURIAE* IN SUPPORT OF  
PLAINTIFFS’ APPLICATION FOR PRELIMINARY INJUNCTION AND  
MEMORANDUM OF POINTS AND AUTHORITIES**

**I. APPLICANT SHOULD BE PERMITTED TO SERVE AS *AMICUS CURIAE* AS ITS PRESENTATION IS RELEVANT AND HELPFUL FOR THE COURT**

The American Civil Liberties Union Foundation of Southern California (“ACLU SoCal”) hereby applies to appear as *amicus curiae* in this action and to file one exhibit, a published report of ACLU SoCal’s Dignity for All Project, *Nowhere to Live: The Homeless Crisis in Orange County & How to End it*.

Applicant presents this report to aid the Court in its consideration of the Application for a Preliminary Injunction (Dkt. 16) currently before this Court and in response to the Court’s request for “testimony and presentation of evidence” and the invitation, in its recent Minute Order Setting Hearing re Plaintiffs’ Application and to Show Cause Why Preliminary or Permanent Injunction Should Not Issue, for “written briefing by any amicus groups.” Dkt. 50 at p. 2. Applicant intends to present additional information about Orange County’s treatment of homeless individuals to help inform the Court’s conclusions.<sup>1</sup>

Applicant respectfully presents the Court with ACLU SoCal’s report, *Nowhere to Live: The Homeless Crisis in Orange County & How to End it* (“*Nowhere to Live*”) and its appendixes (Exhibit 1). *Nowhere to Live* directly bears on “the issues raised by this case, including but not limited to the circumstances faced by Plaintiffs and those living on the Riverbed, details about Defendant Orange County’s process for clearing the Riverbed, information about the number and background of homeless persons in Orange County and on the Riverbed specifically, and how much and what

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<sup>1</sup> ACLU SoCal expects that the Plaintiffs in this matter will separately submit a declaration from Dr. Eve Garrow, Homelessness Policy Analyst & Advocate at ACLU SoCal. ACLU SoCal did not submit Dr. Garrow’s Declaration with this brief, as such a declaration would contain testimonial evidence more appropriate for a Party to introduce.

1 kind of shelter space is currently available.” Dkt. 50 at p.2. Applicant therefore  
2 believes this to be “relevant and helpful” information and thus that its serving as  
3 *amicus curiae* would be desirable. *See, e.g., Nat’l Petrochemical & Refiners Ass’n*  
4 *v. Goldstene*, 2010 WL 2228471 (E.D. Cal. June 3, 2010) (collecting relevant cases).  
5 *Cf. F.R.A.P. 29(a)(3)(B)*. Material in *Nowhere to Live* specifically addresses the  
6 insufficiency of shelter or housing capacity to accommodate those present in the  
7 Riverbed; the County and Cities’ utter failure to implement the County’s plan to end  
8 homelessness; the policies and practices of the County and Cities to cite individuals  
9 who sleep, rest, or sit in public places or exhibit other behaviors deemed “camping”;  
10 and the policies and practices of the County and Cities to order or otherwise compel  
11 individuals who are perceived to be homeless to move along (including to more  
12 remote and dangerous locations). Accordingly, material in this report, as discussed  
13 in the attached amicus brief, will be “of assistance to the Court in the determination  
14 of the substantive issues in this case” (*Am. Trucking Associations, Inc. v. City of Los*  
15 *Angeles*, 2008 WL 4381644 \*2 (C.D. Cal. Sept. 4, 2008)), including both the merits  
16 of Plaintiffs’ claims and the appropriateness of the remedies sought.

17 Applicant ACLU SoCal has an interest in this action. Applicant is an  
18 organization seeking, through its Dignity For All Campaign, to advance social policy  
19 changes needed to end homelessness in Southern California communities and advance  
20 human dignity for all. These changes include expanding access to affordable housing,  
21 permanent supportive housing, and medical and mental health care, as well as limiting  
22 unlawful government and police practices. Campaign staff have engaged with  
23 lawmakers and policymakers; prepared rigorous research, reports, briefings, and other  
24 public education materials. Applicant has also litigated and is litigating civil rights  
25 claims in this Court and the Ninth Circuit on behalf of individuals experiencing  
26 homelessness. For example, Applicant has acted as plaintiffs’ Counsel in *Jones v.*  
27 *City of Los Angeles* in District Court and the Court of Appeals, No. CV 03-1142 ER,  
28 2004 WL 7321250 (C.D. Cal. Jan. 27, 2004), *rev’d and remanded*, 444 F.3d 1118

(9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007); *Glover et al. v. Laguna Beach et al.*, Case No. 8:15-CV-01332-AG-DFM (C.D. Cal); and *Diehl v. the Cty. of Orange*, Case No. 8:17-cv-000246 DOC (KES) (C.D. Cal 2017) (challenging actions by the County of Orange in the Santa Ana Riverbed).

Applicant therefore believes that it can contribute a unique perspective and relevant and helpful information to this action by this filing.

## **II. APPLICANT HAS ADVISED COUNSEL FOR ALL PARTIES OF THE SUBSTANCE OF THIS APPLICATION**

Pursuant to Local Rule 7-19.1, Applicant has made reasonable, good faith efforts to orally advise counsel for all Parties of the date and substance of the present, proposed, *ex parte* application, as explained below.

Counsel for the Applicant Ian Kysel left a voicemail message for Plaintiffs' counsel, Carol Sobel, on the morning of Friday, February 9, 2018 and followed up with an email to Ms. Sobel. Ms. Sobel consented to the filing in writing in a responsive email. Mr. Kysel spoke with Plaintiffs' counsel Colleen Mullen by phone on the morning of Friday, February 9, 2018; Ms. Mullen consented to the filing orally. Mr. Kysel spoke with Plaintiffs' counsel William Wise by phone on the morning of Friday, February 9, 2018; Mr. Wise consented to the filing orally. Mr. Kysel left a voicemail message for Mark Austin, counsel for the City of Anaheim, on the morning of Friday, February 9, 2018, and followed up by email; Mr. Austin indicated in a responsive email that the City of Anaheim did not oppose. Mr. Kysel spoke with Krista Jee, counsel for the City of Costa Mesa, on the morning of February 9, 2018; Ms. Jee consented to the filing orally, with reference to the Court's having invited submissions by amici. Mr. Kysel left a voicemail for Marianne Van Riper, counsel for the County of Orange, on the morning of February 9, 2018 and followed up by email. Ms. Van Riper contacted Mr. Kysel by phone thereafter and consented to the filing orally, with reference to the Court's having invited submissions by amici,

1 and then sent a confirmatory email to Mr. Kysel reiterating that the County did not  
2 oppose the Application.

3 Mr. Kysel left a voicemail for Wayne Winthers, counsel for the City of Orange,  
4 on the morning of February 9, 2018 and followed up by email; Mr. Winthers  
5 indicated in a responsive email that the City of Orange opposes the Application.

6 Further, as required by Local Rule 7-19, the name, address, telephone number  
7 and e-mail address of counsel for all Parties is set out as follows:

8  
9 Counsel for Plaintiffs:

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### 10 **III. CONCLUSION**

11 For the foregoing reasons, Applicant respectfully requests that the Court  
12 GRANT its Application.

13 DATED: February 9, 2018

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

14  
15  
16 By: /s/ Peter J. Eliasberg

17 PETER J. ELIASBERG  
18 Attorney for Applicant  
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**BRIEF OF AMICUS CURIAE**

ACLU SoCal’s 2016 report, *Nowhere to Live: The Homeless Crisis in Orange County & How to End it* (“*Nowhere to Live*”), describes Orange County’s inadequate policies and practices and efforts to address homelessness. The report explains how County and Defendant Cities are failing to provide adequate housing and shelter and how Defendants have, in parallel, criminalized the basic life activities of those experiencing homelessness. Key findings of *Nowhere to Live* relevant to the matter before this Court include:

- As articulated in its “Ten-Year Plan to End Homelessness,” Orange County aims to end homelessness using the “Housing First” strategy—that is, housing people in affordable homes with appropriate services as an immediate response to their needs. Yet the County has conspicuously failed to fund or implement this plan.
- To fund their Housing First strategy, the County relies on stagnant, capped, and disappearing federal and state funding sources. These sources do not come close to providing the funding necessary to create the number of permanent housing solutions required to end homelessness in Orange County. The County spends none of its discretionary budget, which it controls, on housing to end homelessness.
- The other key components of the County’s plan to end homelessness—namely, outreach to people experiencing homelessness, “coordinated entry” into the homeless services system, and the limited year-round emergency shelter and multi-service center model—has been and will be ineffective to end homelessness if the County does not first invest in sufficient permanent housing options. In particular,

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- The severe shortage of permanent affordable housing options creates a backlog of shelter clients who have nowhere to go when they leave shelter programs. A full 70% of shelter clients exit to the streets or another unknown location. Of the remaining 30%, the vast majority do not end up housed when they leave shelter programs. The County's records show that 12% of shelter clients exit to another emergency shelter and another 11% exit to a program (such as programs for those managing addiction) that includes housing. Only 2% exit to subsidized permanent housing.
- Research shows that, because of their disabilities, chronically homeless persons often cannot tolerate shelter living or transitional housing programs, which can exacerbate their mental health symptoms.
- The County and 33 out of its 34 city governments (including Defendant cities in this Action—Anaheim, Costa Mesa, and Orange) have responded to homelessness by passing and establishing a pattern or practice of enforcing ordinances, including anti-camping ordinances, that criminalize basic life activities, such as sleeping, sitting, and resting in public places. When homeless individuals engage in sleeping, sitting, or resting in public places, they are cited under these ordinances. Such enforcement forces people fleeing citation for sleeping, sitting, and resting into dangerous and marginal living situations. Criminalization further perpetuates homelessness by saddling people with significant fines, jail time, and criminal records that make it more difficult for them to access needed benefits and services and diverts public resources from real solutions.

*Nowhere to Live* thus addresses key facts underlying Plaintiffs' claims in this matter and supports Plaintiffs' prayer for a Preliminary Injunction to enjoin unlawful conduct by Defendants.

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1 For the foregoing reasons, Amicus Curiae ACLU of Southern California  
2 respectfully urges the Court to grant the relief sought by Plaintiffs.

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4  
5 DATED: February 9, 2018

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

6  
7 By: /s/ Peter J. Eliasberg

8 PETER J. ELIASBERG  
9 Attorney for Amicus Curiae  
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